

Carmen Suarez-Smith,)	
)	
Plaintiff,)	Case No.: 2:11-cv-00201-GMN-PAL
vs.)	
)	ORDER
BAC Home Loans Servicing, LP; et al.,)	
)	
Defendants.)	
)	

I. BACKGROUND

II. DISCUSSION

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1 D. Nev. R. 7-2(d). As the Ninth Circuit Court of Appeals has held, “[f]ailure to follow a
2 district court’s local rules is a proper ground for dismissal.” *Ghazali v. Moran*, 46 F.3d 52, 53
3 (9th Cir. 1995); *see, e.g., Roberts v. United States of America*, No. 2:01-cv-1230-RLH-LRL,
4 2002 WL 1770930 (D. Nev. June 13, 2002). However, before dismissing a case for failing to
5 follow local rules or for failure to prosecute, a district court must weigh five factors: “(1) the
6 public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its
7 docket; (3) the risk of prejudice to defendants/respondents; (4) the availability of less drastic
8 sanctions; and (5) the public policy favoring disposition of cases on their merits.” *Pagtalunan*
9 *v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002).

10 Under this test, “the public’s interest in expeditious resolution of litigation always favors
11 dismissal.” *Yourish v. California Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999). Also, the
12 Court’s need to manage its docket is manifest. *See State Farm Mut. Auto. Ins. Co. v. Ireland*,
13 No. 2:07-cv-01541-RCJ-RJJ, 2009 WL 4280282 (D. Nev. Nov. 30, 2009). Here, Plaintiff’s
14 failure to prosecute this action, to file an amended complaint, or to timely respond to
15 Defendants’ motion has unreasonably delayed the resolution of this case, and such
16 unreasonable delay “creates a presumption of injury to the defense.” *Henderson v. Duncan*,
17 779 F.2d 1421, 1423 (9th Cir. 1986).


18 The fifth factor also does not weigh in favor of Plaintiff because it is not clear that this
19 case was likely to be decided on the merits. Plaintiff has now had over two years to file an
20 amended Complaint curing the deficiencies previously identified by Defendants and by the
21 Court. Over half a year has elapsed since Plaintiff’s appeal was dismissed by the Ninth Circuit
22 Court of Appeals. Plaintiff has not indicated any intent to prosecute this action and has not
23 entered any appearance since October 2011. Accordingly, the Court concludes that
24 consideration of the factors discussed above weighs in favor of dismissal. Here, less drastic
25 sanctions available to the Court include dismissal of Plaintiff’s Complaint without prejudice.

1 Therefore, in consideration of Plaintiff's *pro se* status, the Court will dismiss Plaintiff's
2 Complaint without prejudice.

3 **IV. CONCLUSION**

4 **IT IS HEREBY ORDERED** that the Motion to Dismiss (ECF No. 35) is **GRANTED**.
5 Plaintiff's Complaint is dismissed without prejudice. The Clerk shall enter judgment
6 accordingly and this case shall be closed.

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8 **DATED** this 4 day of December, 2013.

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11 Gloria M. Navarro
12 United States District Judge
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